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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
11/536,956	09/29/2006	Louis Jarosinski	200-00004	9750
26753 7590 09/25/2007 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			EXAMINER LE, HUYEN D	
			ART UNIT 3751	PAPER NUMBER
			MAIL DATE 09/25/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

11/536,956

Applicant(s)

JAROSINSKI ET AL.

Examiner

Huyen Le

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 11-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 8-9 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enge et al (6,547,256) in views of Marshall (4,334,330) and Porter (5,608,925).

The Enge et al reference discloses a bedside commode comprising a wheeled frame structure 26; a platform assembly 64 attached to an uppermost portion of the frame structure, the platform assembly including a toilet cutout 54 and the platform assembly 64 further including a toilet seat 36 lying above and generally coextensive along the platform assembly 64 and provided with an opening that overlies the cutout, the toilet seat 36 defining a support surface covering substantially an entire width and an entire length of the platform assembly, the platform assembly 64 having a back end adapted to be positioned towards a user seated on a bed and a front end spaced from the seated user; a gripping arrangement formed by the front end of the platform assembly 64 itself below a plane of the toilet seat 36;

Although Enge et al does not disclose a retaining arrangement for holding a sanitary waste container in communication with and beneath the cutout, and the toilet seat being pivotally mounted to the platform assembly; and a ramp arrangement

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pivotally mounted to the back end of the platform assembly between a horizontal bridging position and a vertical storage position, attention is directed to the Marshall reference which teaches another bedside commode having a ramp arrangement 16 pivotally mounted to the back end of the platform assembly between a horizontal bridging position and a vertical storage position. Furthermore, Porter teaches that a toilet seat can be pivotally mounted to a platform of a mobile commode by conventional fasteners (i.e. a toilet seat and lid assembly conventionally includes a hinge with bolts and nuts for fastening and allows the seat and lid to pivotally move about the hinge. Porter also teaches a vessel 22 fixed underneath a platform 16 and a waster container 28 removable from the vessel.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Enge et al commode with a ramp arrangement for facilitating transferring a user from a bed to the commode in view of the teaching of Marshall. Furthermore, it would have been obvious to one of ordinary skill to substitute a pivotal toilet lid seat assembly for the stationary toilet seat of the Enge et al commode in view of the teaching of porter, wherein so doing would amount a mere substitution of one functional equivalent toilet seat for another within the same art that would work equally well in the Enge et al commode. Also, it would have been obvious to employ a bed pan assembly having a vessel 22 and a waster container 28 removable from the vessel as taught by Porter on Enge et al commode for allowing a user to stay on the chair while using a bedpan toilet.

The introductory statement and all other functional statements of the intended use "whereby the frame structure is configured to be straddled by legs of the seated user when the back end of the platform assembly is positioned adjacent a bedside..." have been carefully considered but deemed not to impose any structural limitations on the claim(s) distinguishable over the Enge et al commode which is capable of being used as claimed.

Regarding claims 12-13, the method of using the commode as claimed would be inherently performed during the normal operation of the modified Enge et al commode.

3. Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enge et al (6,547,256) in views of Marshall (4,334,330) and Porter (5,608,925) as applied to claim 1 above, and further in view of Gagliardi (4,052,087).

Although Enge et al does not disclose the pairs of front leg and back leg assemblies being adjustable, attention is directed to the Gagliardi reference which teaches a mobile commode comprising casters with pins 26/44 and holes 28/38 removably attached to the front and back leg assemblies for telescopically adjusting the height of the mobile platform as needed.

4. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Enge et al (6,547,256) in views of Marshall (4,334,330), Porter (5,608,925) and Gagliardi (4,052,087) as applied to claim 2 above, and further in view of Slagerman (6,264,218).

Although Enge et al does not disclose propulsion wheels rotatably mounted horizontal members between the lower legs, attention is directed to the Slagerman

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reference which teaches a mobile platform having propulsion wheels mounted the platform for facilitating a user to self-transport a desired location.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the Enge et al mobile commode with propulsion wheels in view of the teaching of Slagerman for facilitating a user to self-transport a desired location.

Response to Arguments

5. Applicant's arguments with respect to claims 1, 12 and 13 have been considered but are moot in view of the new ground(s) of rejection.

Regarding applicant's arguments that Porter does not teach a toilet seat pivotally mounted a platform, examiner disagrees with applicant. The reasons have been stated in the rejection above.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any


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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Huyen Le
Primary Examiner
Art Unit 3751

HL